

# NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 36.01 Herring Management Plan

**CONCISE SUMMARY:**

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). At their Days Out Meeting in May 23, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday and are limited to landing 400,000 lbs (10 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C shall fish and land Atlantic herring on seven consecutive days a week and shall not transfer fish caught to a carrier vessel at sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3).

**EFFECTIVE DATE:** June 3, 2017

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DEPARTMENT OF MARINE RESOURCES

Chapter 36 Herring Regulations

36.01 Herring Management Plan

A. Definitions

(1) Herring.

Herring means Atlantic Sea Herring, particularly the *Clupea Harengus harengus*.

(2) ICNAF gonad stages.

ICNAF gonad stages are the official stages adopted by the International Commission for the Northwest Atlantic Fisheries in 1964.

Excerpt from ICNAF, 1964, Table 2 definitions:

Stage V. Gonads fill body cavity. Eggs large, round; some transparent. Ovaries yellowish; testes milkwhite. Eggs and sperm do not flow, but sperm can be extruded by pressure.

Stage VI. Ripe gonads. Eggs transparent; testes white; eggs and sperm flow freely.

(3) Spawn herring.

Spawn herring is a sexually mature herring (male or female) in ICNAF gonad stages V or VI.

(4) Herring harvester.

Any person or vessel operator in command of any type of gear used to harvest herring.

(5) Management Area 1.

Management Area 1 is all U.S. waters of the Gulf of Maine encompassed by the shoreline and an imaginary line beginning at the intersection of the 41° 35' N parallel with the eastern shore of Monomoy Island; thence along a straight line in a northeast direction to its intersection with the U.S.-Canada boundary at the point 42° 53' 14" N parallel of latitude and 67° 44' 35" W meridian of longitude; thence in a northerly direction along the U.S.-Canada boundary.

Management Area 1 is subdivided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Beginning at 70° 00' W Longitude on the Cape Cod shoreline; thence due north to 42° 38.4' N Latitude, 70° 00' W Longitude; thence due northeasterly to 42° 53.0' N Latitude, 69° 40' W Longitude; thence due northeasterly to 43° 12.0' N Latitude, 69° 00' W Longitude; thence due northeasterly to 43° 40.0' N Latitude, 68° 00' W Longitude; thence due northeasterly to 43° 58.0' N Latitude, 67° 22' W Longitude at the U.S.-Canada boundary; thence northerly along the irregular U.S.-Canada boundary.

(6) Management Area 2.

South Coastal Area: All waters west of 70° 00' W Longitude and south of 41° 35' N Latitude, to include state and Federal waters adjacent to the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia and North Carolina.

(7) Management Area 3.

Georges Bank: All U.S. waters east of 70° 00' W Longitude and southeast of the line that runs from a point at 70° 00' W Longitude and 41° 35' N Latitude, northeasterly to the Hague Line at 67° 44' 35" W Longitude and 42° 53' 14" N Latitude.

(8) Herring Dealer.

Any person who purchases herring directly from a herring harvester for other than their own use and then sells the herring as a wholesale or retail product, and a herring harvester who sells herring to an individual(s) for personal use.

(9) "GSI" means the gonadosomatic index calculated by the following formula:

$(\text{Gonad Weight} / \text{Total Body Weight} - \text{Gonad Weight}) \times 100$  percent.

(10) Spawning Sample.

Sample means a batch of 100 adult herring taken randomly from commercial catch or fish surveys.

(11) Landing.

To come to shore, float or a dock and offload herring; or to transfer herring at sea to a vessel utilizing the herring for bait.

B. Permits and reporting

(1) Dealer Permit.

All herring dealers shall obtain a herring dealers permit as part of the Wholesale Seafood License issued by the Department of Marine Resources. There will be no additional charge for this permit. The Commissioner may require that dealer permit holders report volumes of herring bought and sold and other information as required.

(2) IVR Herring Harvester Permit

All harvesters, except those who hold a Federal Limited Access Atlantic Herring permit, who catch 2,000 pounds or more Atlantic herring in any given week must possess an IVR Herring Harvester Permit on their Commercial Pelagic and Anadromous Fishing License issued by the Department of Marine Resources. For purposes of this section only, a week is defined as beginning on Sunday at 0001 hrs (12:01 am) and ending Saturday at 2400 hrs (midnight). There will be no additional charge for this permit.

(3) Reporting of catch

Harvesters: See Chapter 8.20(Q) and 8.20(R)

Dealers: See Chapter 8.10(F)-Landings Program

C. Gear and vessel restrictions.

(1) Gear Type Prohibition.

It shall be unlawful to use otter trawls, beam trawls, pair trawls, or midwater trawls to fish for herring within the territorial waters of Maine.

(2) Vessel Size and Shaft Horsepower.

It shall be unlawful for any vessel that exceeds 165 feet length overall (LOA) or no more than 750 gross registered tonnage (GRT) to fish for or take herring within Maine territorial waters or to land herring in any Maine port. It shall be unlawful for any vessel possessing more than 3000 shaft horsepower to fish for or take herring within Maine territorial waters or to land herring in any Maine port.

This rule does not prohibit the landing of herring that are lawfully imported from other countries, territories or states provided the origin of fish is documented.

D. Catch restrictions.

License holders shall be informed by public notice in a newspaper circulated in the area affected of any restrictions herein.

(1) Spawning herring protection.

It shall be unlawful to fish for, take, possess, transfer or land in any State of Maine port or facility, or to transfer at sea from any Maine registered vessel, any catch of herring harvested from the following described areas within Management Area 1A during a spawning area closure:

(a) Spawning Area Boundaries:

Eastern Maine Spawning Area means:

All waters bounded by the following coordinates:

Maine coast            68° 20.0' W,  
43° 48.0' N            68° 20.0' W,  
44° 25.0' N            67° 03.0' W,  
North along the U.S./Canada border.

Western Maine Spawning Area means:

All waters bounded by the following coordinates:

43° 30.0' N            Maine coast,  
43° 30.0' N            68° 54.5' W,  
43° 48.0' N            68° 20.0' W,  
North to Maine coast at 68° 20.0' W.

Massachusetts/New Hampshire Spawning Area means:

All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and 43° 30.0' N 70° 00.0' W.

(b) Closure Timing. To protect spawning sea herring, the commissioner shall close the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas to directed Atlantic herring fishing effort when it is determined that sea herring are in later stages of maturity just prior to spawning. A closure date will be projected based on a formula and process set forth in the

Atlantic States Marine Fisheries Commission's Amendment 3 (Section 4.2.6) Interstate Fishery Management Plan for Atlantic Herring.

- i. Closure Duration. Once the closure is enacted, it shall remain in effect for 28 days.
- ii. Closure Extension. Sampling of Atlantic herring taken from Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas shall begin during the last week of the initial closure period or at the end of the initial closure period. If one sample taken from the Eastern Maine or Western Maine Spawning Areas is comprised of 25% or more spawn herring then the closure may be extended for an additional 14 days.
- iii. Closure Prohibitions. During the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area Closure or an extension thereof, it shall be unlawful for any vessel to possess or land more than 2,000 pounds of sea herring caught within the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area.
- iv. Closure Procedure. The initial closure date shall be announced 5-days prior to the closure being enacted and any closure extension shall be announced immediately to be enacted the day following the announcement.
- v. Default Closure Dates: If sufficient samples are not available, spawning area closures will begin on area specific dates as follows: Eastern Maine (August 28), Western Maine (October 4), Massachusetts/New Hampshire (October 4)

(c) Exemptions

- i. Transport. Any herring vessel having onboard herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed or restricted area and land at a Maine port, only if all of its fishing gear has been stowed.
- ii. Fixed gear. The fixed gear (stop seines and weirs) fishery east of Cutler is exempt from spawning area restrictions.

(2) Catch quota

Fishing for herring in Management Areas 1A, 1B, 2 and 3 is subject to the sub-annual catch limit (ACL) and fishing effort restrictions specified by the ASMFC Atlantic Herring Section and the NEFMC in accordance with their respective Fisheries Management Plans (FMP). The ACL is established annually by July 1 for the following year by ASMFC and NEFMC. Any reduction in the harvest will be determined in consultation with the ASMFC and NEFMC. No person shall land herring taken from a management area when 92% of the area's seasonal or sub-annual catch limit will be exceeded or if 95% of the coastwide annual catch limit will be exceeded.

- (a) Exception. Up to 295 mt of the Area 1A sub-ACL is allocated for the fixed gear fisheries in Area 1A (weirs and stop seines). This set-aside is available for harvest by fixed gear within the fishing year until the fixed gear set aside is fully utilized. No person shall land herring taken from Area 1A with fixed gear when 92% of the fixed gear set-aside portion of the Management Area 1A sub-ACL will be exceeded.

(3) Effort Restrictions

- (a) Management Area 1A, Sub-ACL Trimester 1 (January 1 – May 31)

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Atlantic States Marine Fisheries Commission (ASMFC) designates zero landing days between January 1 to May 31, annually.

~~For the purpose of this subsection, "landing" shall be defined as follows: To come to shore, float or a dock and offload herring; or to transfer herring at sea to a vessel utilizing the herring for bait. Harvester vessels may offload to a carrier vessel at any time.~~

(b) Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30)

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). All vessels landing herring caught in Management Area 1A in any Maine port will be limited to fishing for and landing herring on days that have been designated landings days by the ASMFC.

All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6 pm to 6 pm). ~~For the purpose of this subsection, "landing" shall be defined as follows: To come to shore, float, or a dock and offload herring.~~

i. For the purpose of this subsection, the following terms shall be defined as follows:

~~"Landing": to come to shore, float, or a dock, and offload herring; or to transfer herring at sea to a vessel utilizing the herring for bait.~~

"At-Sea Transfer": to transfer herring from a harvester vessel to a carrier vessel before the harvester vessel has landed.

"Harvester vessel": a purse seine vessel that is required to report the catch it has aboard (along with effort data under a gear code other than CAR) as the harvesting vessel on its Federal Vessel Trip Report.

"Carrier vessel": a vessel that has received herring from another vessel and is not required to will not report that catch as its own on its Federal Vessel Trip Report; and, not rigged as a purse seine vessel.

"Purse seine vessel": a vessel currently rigged and capable of harvesting fish with an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear to set, purse and haul such a net, which may include, but not limited to, a hydraulically-driven block, roller gear, and/or skiff.

"Truck": a truck, as a unit of measurement, is equal to 40,000 lbs.

ii. Harvester vessels:

It shall be unlawful for any harvester vessel to give or receive Atlantic herring taken from Management Area 1A prior to landing. Harvester vessels shall not operate as a carrier vessel on the same trip when operating as a harvester vessel.

(A) For all vessels issued a state Commercial Pelagic and Anadromous license that do not possess a Federal Limited Access Herring Permit:

All harvester vessels may possess and land Atlantic herring seven days a week. Daily trip limit shall not exceed 6,600 lbs per day and all at-sea transfers are prohibited. All harvester vessels landing herring caught in territorial waters within Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

(B) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category A:

The permit holder must have declared into the Atlantic Herring fishery by May 23<sup>rd</sup>, 2017 to be eligible to harvest. Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday and are limited to landing 400,000 lbs (10 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. All harvester vessels landing herring caught in Management Area 1A in any Maine port are subject to a weekly landing limit of no more than 400,000 lbs (10 trucks). All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making at-sea transfers to only one carrier vessel per week. All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

(C) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category C:

All harvester vessels may possess and land Atlantic herring seven days a week. Daily trip limit shall not exceed 55,000 lbs per day and all at-sea transfers are prohibited. All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

All harvester vessels shall send an email hail to DMR ([herring.dmr@maine.gov](mailto:herring.dmr@maine.gov)) three hours prior to landing that includes the following information:

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of herring on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch to be received, by weight, to each dealer (by dealer name and landings number)
- VTR number

iii. Carrier Vessels:

All carrier vessels landing herring caught in Management Area 1A in any Maine port are limited to receiving at-sea transfers from one harvester vessel per week with a weekly landing limit of 80,000 lbs (2 trucks). All carrier vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24 hour period (6 pm to 6 pm). Carrier vessels ~~may~~ shall not operate as a harvester vessel on the same trip when operating as a carrier vessel.

All carrier vessels shall send an email hail to DMR ([herring.dmr@maine.gov](mailto:herring.dmr@maine.gov)) three hours prior to landing that includes the following information:

- Name of harvester
- Name/Vessel ID

- Permit ID
- Landings number of license holder
- Total amount of herring aboard
- Harvester vessel name from whom carrier received catch
- Date, time and location (dealer, city, state) of offload at port
- Estimated amount to be received by weight to each dealer (by dealer name and landings number)
- VTR number (and any VTR numbers for harvester vessels from whom carrier has received at-sea transfer)

(c) Management Area 1A, Sub-ACL Trimester 3 (October 1 – December 31)

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Atlantic States Marine Fisheries Commission (ASMFC) designates seven landing days between October 1 to December 31. Harvester vessels do not need to declare into the Atlantic Herring fishery for Trimester 3.

(d) ~~(e)~~ Exceptions.

Any vessel may possess herring as an incidental catch and land herring caught in Management Area 1A, 1B, 2 or 3, in any Maine port, as long as such herring do not comprise more than 10% of the total weight of the catch not to exceed 2000 lbs per trip.

Any license holder or vessels landing herring taken from Management Area 1A with fixed gear are not subject to effort restrictions imposed by this subsection.



## **Basis Statement**

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). At their Days Out Meeting in May 23, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday and are limited to landing 400,000 lbs (10 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C shall fish and land Atlantic herring on seven consecutive days a week and shall not transfer fish caught to a carrier vessel at sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3).

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: **Chapter 36.01**

STATUTORY AUTHORITY: **12 M.R.S. §6171**

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held May 23, 2017.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

The adopted rule(s) seek to maintain a balanced supply of Atlantic Herring within the State of Maine. The rule is intended to have a long-term positive impact on both the Atlantic Herring and Lobster fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

New compliance measures as specified by Addendum 1 of Amendment 3 of the Interstate Management Plan for Atlantic Herring as determined by the Atlantic States Marine Fisheries Commission in conjunction with management regulations determined during the Days Out Meeting of the Atlantic Herring Section held May 23, 2017 in New Hampshire.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*  
[see §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [see §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*